



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

Application of Thomas Cochrane for Approval of
Repairs to a Boathouse on Chetek Lake, City of
Chetek, Barron County, Wisconsin

Case No.: 3-NO-00-03173UC

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PERMIT

On October 9, 2000, Mr. Thomas Cochrane, 75 Chichester Street, Chetek, Wisconsin, 54728, filed an application with the Department of Natural Resources for approval of repairs to a boathouse on Chetek Lake. The proposed project is located in Section 19, Township 33 North, Range 10 West, City of Chetek, Barron County, Wisconsin.

By letter dated December 7, 2000, and attached Findings of Fact and Order, the Department of Natural Resources denied the application. On January 4, 2001, the Department received a request for a contested case hearing from Mr. Cochrane.

By letter dated January 5, 2001, the Department granted the request for a contested case hearing pursuant to Wis. Stat. § 227.42. On March 12, 2001, the Department filed a Request for Hearing with the Division of Hearings and Appeals.

Pursuant to due notice hearing was held on June 19, 2001, at Barron, Wisconsin, Jeffrey D. Boldt, administrative law judge (the ALJ) presiding.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Department of Natural Resources, by

Attorney Michael D. Scott
101 South Webster Street
Madison, WI 53707

Thomas and Joan Cochrane, applicants, by

Attorney Stuart Cochrane
600 Boston Centre
Fort Dodge, Iowa 50501

FINDINGS OF FACT

1. On October 9, 2000, Thomas and Joan Cochrane, 75 Chichester Street, Chetek, Wisconsin 54728, filed an application with the Department of Natural Resources for approval of repairs to a boathouse on Chetek Lake in Section 19, Township 33 North, Range 10 West, Barron County, pursuant to Wis. Stat. § 30.121.

2. Chetek Lake is navigable in fact at the project site.

3. The applicants are riparians and own the above-described property on Chetek Lake in the City of Chetek.

4. The applicant proposes to replace 12 pilings, level the boathouse, replace eight square feet of siding, and construct 16 feet of rock shore wall. The boathouse sits on pilings placed on the bed of Chetek Lake. The boathouse is approximately 14 feet by 18 feet wide. It is dilapidated and not sitting straight, both sidewalls and the middle wall are tilting in extensively. (See: Ex. 10)

5. The applicant submitted two separate bids from the same company relating to the cost of the boathouse repairs. (Exs. 1 and 4) The bids are for \$502.16 and \$844.00. Mr. Cochrane had no explanation for the two bids, but is relying on the \$502.16 figure.

6. The Department denied the request to make boathouse repairs on November 17, 2000 and took the position that the estimated repairs exceed 50% of the assessed value of the boathouse, and that the boathouse was in a major state of disrepair. The Department also sought removal of the boathouse no later than December 30, 2001.

7. The applicant submitted a City of Chetek Nonconforming Structure Assessment indicating that the certified equalized assessed value (CEAV) of the boathouse structure is \$3,100.00 for January 1, 2001. (Ex. 2) This information was confirmed by Roger Koski, City Assessor for the City of Chetek (the city assessor), and a licensed assessor working for Bowmar Appraisal, Inc. in Eau Claire, Wisconsin. The city assessor testified at length as to how he arrived at the \$3,100.00 CEAV. The city assessor testified that he estimated that all properties located in the City of Chetek were at approximately 62 percent of fair market value. The boathouse had been previously assessed at \$1,900.00 in 1994. The \$3,100.00 represents calculation at 100 percent of the current fair market value. However, the boathouse is smaller than city records reflected. The City had it listed as 16 feet by 22 feet, instead of 14 feet by 18 feet. Correcting for this error, the city assessor testified that for January 1, 2000 the CEAV would be approximately \$2,217.60, or slightly higher because smaller properties are assessed at a

higher rate. The boathouse was subject to a separate assessment and the City had a rational basis for that assessment. There is accordingly no need to consider the appraised value.

8. Even applying the \$844.00 estimate, the proposed repairs do not exceed 50 percent of the CEAV of approximately \$2,217.60. The boathouse is accordingly not in a “major state of disrepair” within the meaning of the statute.

9. There is a separate CEAV and, accordingly, it is not appropriate to consider the current appraised value.

10. The proposed project will not impact wetlands.

11. Boathouse repairs are a Type IV action under Wis. Admin. Code § NR 150.03(f)(17). Type IV actions do not require an environmental assessment. The DNR has complied with the procedural requirements of Wis. Admin. Code ch. NR 150, and Wis. Stat. § 1.11, regarding assessment of environmental impact.

DISCUSSION

The Department argues that the Division should not apply the certified equalized assessed value but should instead look at the appraised value. However, the statute clearly gives preference to the certified equalized assessed value. Wis. Stat. § 30.121 reads as follows:

The riparian owner of any boathouse or fixed houseboat extending beyond the ordinary high-water mark of any navigable waterway may repair and maintain the boathouse or fixed houseboat if the cost of the repair or maintenance does not exceed 50% of the equalized assessed value of the boathouse or fixed houseboat.

If the boathouse or fixed houseboat is not subject to assessment, the owner may make repairs if the cost of the repair or maintenance does not exceed 50% of the current fair market value of the boathouse or fixed houseboat. (emphasis added)

It is clear that either estimate of repairs (\$502.16 or \$844.00) is significantly less than half the official CEAV of \$2,217.60 as described by the city assessor. Accordingly, the boathouse is not in “a major state of disrepair” within the meaning of the statute. The proposed project is approved, subject to the conditions set forth below.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has authority pursuant to Wis. Stat. §§ 30.121 and 227.43(1)(b) to hear contested cases and enter necessary orders relating to applications for approval of boathouse repairs.

2. The riparian owner of any boathouse or fixed houseboat extending beyond the ordinary high-water mark of any navigable waterway may repair and maintain the boathouse....if the cost of the repair or maintenance does not exceed 50% of the equalized assessed value of the boathouse or the fixed boathouse. Wis. Stat. § 30.121

3. The certified equalized assessed value of the boathouse is approximately \$2,217.60. Even applying the cost of repairs of \$844.00, the value of the repairs does not reflect 50% of the equalized assessed value.

4. Current value means the equalized assessed value as determined by § 70.32, or, if not assessed, its current fair market value as certified by a competent appraiser using standard real estate appraisal techniques. If assessed, but the assessment for the boathouse or fixed houseboat cannot be separately distinguished from the general property assessment, the current value shall be the current fair market value as set forth above. Wis. Admin. Code § NR 325.03(4) In this matter, the boathouse was subject to a separate assessment. Accordingly, the current value is the certified equalized assessed value.

PERMIT

AND THERE HEREBY DOES ISSUE AND IS GRANTED to the applicant, a permit under Wis. Stat § 30.121, for the repair of the boathouse as described in the foregoing Findings of Fact, subject, however, to the conditions that:

1. The authority herein granted can be amended or rescinded if the structure becomes a material obstruction to navigation or becomes detrimental to the public interest.

2. The permittee shall waive any objection to the free and unlimited inspection of the premises, site or facility at any time by any employee of the Department of Natural Resources for the purpose of investigating the construction, operation and maintenance of the project.

3. A copy of this permit shall be kept at the site at all times during the repairs of the boathouse.

4. The permit granted herein shall expire three years from the date of this decision, if the repairs are not completed before then.

5. The permittee shall obtain any necessary authority needed under local zoning ordinances and from the U.S. Army Corps of Engineers.

6. No heavy equipment shall be operated in the lake at any time unless written notification is made to the Water Management Specialist, Dan Harrington, at least 5 working days in advance.

7. Work shall be accomplished according to a timetable approved by the DNR. No work shall be undertaken during fish spawning periods.

8. Acceptance of this permit shall be deemed acceptance of all conditions herein.

This permit shall not be construed as authority for any work other than that specifically described in the Findings of Fact.

Any further repairs are expressly not authorized.

ORDER

WHEREFORE, IT IS HEREBY ORDERED, that the applicant shall be given a permit to repair the boathouse as described in their application and as set forth in the work orders described above.

IT IS FURTHER ORDERED, that the repairs be undertaken in accordance with a schedule set by the Department of Natural Resources.

Dated at Madison, Wisconsin on July 16, 2001.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705
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By: _____

JEFFREY D. BOLDT
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.